12: Haar S-4 (1939) 1948 OB1 Indonesia DB1
Atjehnese OD4 Batak OD5
●Bali OF7 Atjehnese OD4
Minangkabau OD10

I
426 place after the last harvest and before the next planting. Any plant-
432 ing belongs to the person who put it in the ground. Even if redemption is managed before the harvest is in, the original owner of the land must permit the planter to have his harvest.

The explicit agreement of the pledge transaction, however, may stipulate the number of seasons the lender may have undisturbed use of the land.

[685] e. *Upkeep of pledged land.*—Pledged land must be returned to its native possessor in as good a state as that in which it was received. Damage resulting from bad faith must be compensated for. But there is no compensation for improvements or any increment in the value of the land. If the pledgee has planted perennial plants without the permission of the owner, unless he removes them again, they pass in native possession to the pledgor when the land is redeemed. In some places, however, as among the Bataks, when the pledgor tacitly permits the planting of trees on pledged land, he forfeits his right ever to redeem the land he has pledged.

f. *Lump repayment.*—Money borrowed on land must be repaid in a lump sum. If instalments are paid, they are no more than an entrusting of the sums to the pledgee in advance of final redemption.

In various law-areas there is a form of transaction which is a modified form of pledging (ngajual tutung in West Java; dondon susut among the Mandailing). In essence it is the prepaid rental of land. But the natives call it pledging, with the agreement that the loan shall be gradually worked off by turning over a part of the produce of the land. Then when the money advanced has been paid off, the field reverts to its owner.

Bl MK At Bt I

184 g. *Local variations.*—The pledging of land is of common occur-
426 rence in all law-areas of Indonesia. In each area it has its peculiar
423 shadings in harmony with the local color given by the special legal system of the area.

432 To give some examples: in Atjeh the offer and acceptance formula
● 596 (ijaab kabul) is borrowed from Islam. Among the Bataks the transaction must take place over hot rice and with designation of the boundaries of the land in question (as is true of all their important agreements). In Minangkabau pledging of family land is permitted only to meet a family need for money for fulfilment of adat requirements (marriage of a daughter, funerals, elevation of a member to chiefship, repair of the adat house, etc.). In some of these situations the family headman has the power to pledge the land; in others a unanimous declaration of a family conclave is

12: Haar S-4 (1939) 1948 OBI Indonesia OBI
Batak OD5 Java OEI
Minangkabau OD10 Bali OF7 Bl
Atjchnese OD4 MK
At
BT

called for. Among these people the pledgee has to give the landowner an annual present of rice in continuing acknowledgment of the owner's right of redemption (pitungguh gadai). The Toba-Bataks accomplish the same function by having the owner preside at the annual garden sacrifices. In Bali it may be stipulated that if the field goes sterile, the loan advanced on the land must be paid back. In Java the community right of disposal limits the power of the individual to pledge the land, and this is true in other places. In Bantam the possibility of increasing the loan up to the sale value of the land is known as "ndalami gadé." The practice is recognized everywhere else, but under different names. In some places there is a repeated imitation of the initial land transaction before the village chief, in order to keep public recognition of the pledge relation alive. In Mingangkabau this is called "pitungguh gadai."

2. THE SALE OF LAND

As has already been noted, the payment of the purchase price in the presence of the chief effects an immediate transfer of native possession.

a. *Rights of a bona fide purchaser.*—Sales by persons who do not have a true title to the land occur again and again. The common situation is where the seller is merely a co-owner, or perhaps, an agent without proper authority. The transfer may well be approved and aided by the village chief under the impression that the seller is the rightful proprietor. In that event, if the buyer was acting in good faith, his purchase is good, and the law entitles him to the land in preference to the defrauded owner. The Dutch courts in a recent decision, which seems to be sound and fortunate, extended the principle to apply to the rights of a pledgee for the term fixed in a pledge transaction. The true native possessor of the land fraudulently sold is then in the position of having to buy back the land himself, or else he must give it up. His subsequent recourse is to attempt recovery of the sum in question from the fraudulent seller.[2]

b. *Public sale.*—The public sale of land in execution of a judicial decision is in violation of the principles of native law. There are no provisions for it in the adat. This raises a crucial question as to what is just, if a cultivated field is sold at a public sale for account of a false owner. No precautions have been taken in the Dutch law to see to it that the public sale is recognized in the native village legal

[2] Landraad Tasikmalaja of Nov. 18, 1935, *aff'd* Raad Batavia of July 24, 1936, 148 Tijdschrift 378.

12: Haar S-4 (1939) 1948 OBI Indonesia OBI
Java OEI Ngadju OC9
Bali OF7

organization, however, the mother, who brings up the children and who is capable of supporting the children, may be made responsible for doing so, in addition to the father.[1] If, in case of conflict, decisions have to be made, the interests of the child are the most important factor.

The influence of guilt on the determination of property disposition has been mentioned above, and the consequences of divorce with respect to the property will be repeatedly mentioned in the treatment of the law of marital property.

C. MARITAL PROPERTY

The families that come into being by marriage require a material foundation. The husband and wife (with their children) must carry on life jointly as a family unit, and for that purpose they must have goods at their disposal. Where the kinship unit has great social significance as a community, family property is distinguished from the kin group property. Sometimes the boundaries are weak and evanescent; sometimes distinct and clearly visible. Where the kin groups do not occur as organized units, the families with their possessions are the delimited nuclei of the communities, but nevertheless the close kin group relationship extends over the families and exerts an influence on the legal status of the family property. Counter to the kin groups as communities, the family emancipates itself; it lives in a daily equilibrium with these larger groups, but also in a certain tension. In more advanced relationships it is in process of wresting itself free, or has wrested itself free, from the closed character of the organized kinship group. Vice versa, the claim of the kin group as an unorganized group of relatives asserts itself again and again. By the law of matrimonial property the family possessions are kept in their place between the two poles of unequal strength, the kin group and the family.

Generally speaking, a fourfold distinction can be made with respect to family property: (a) property that is given to or has accrued to one of the spouses from his or her kin group as a result of partition or inheritance; (b) property acquired by each of the marriage partners for himself, before or during the marriage; (c) property acquired in common by the marriage partners during the marriage; (d) property presented jointly to the couple at the time of marriage.

1. *Inherited property.*—It is a generally valid principle of Indonesian adat law that property obtained from one's own family by

[1] [i.e. increases of divorce -- Analyst]

inheritance or partition remains in the native possession of that spouse from whose family the property originated. Such property is called "pimbit" (Ngaju Dyak), "sisila" (Macasser), "babaktan" (Bali), "asal," "asli," "pusaka" (Java, Malay), or "gana," "gawan" (Java). In case of divorce the possessions accordingly remain with the marriage partner possessing them, and after the death of the native possessor, property does not pass outside the kin group; especially, it does not pass by inheritance to the other spouse, and perhaps for that reason, in Java it does not pass to adopted children, either. People say that this is in order that the property shall not get lost. Among the Minangkabau, kin group property can never be assigned by partition, and it cannot pass by inheritance to an individual member of the extended family group. As to this matter, the small family, or the branch of the family group, stands out but feebly, in consequence of the right of utilization of the extended family possessions.[14] But nearly everywhere else, the separateness of kin group property, which has been made family property, is sharper. Possessions, which are given to the marrying woman as wedding outfit, sometimes (among the Pasemah, for example) remain her possessions, even in a patrilineal system, and pass by inheritance to her children; and in the event of her dying childless they pass to her husband. Although, in case of divorce, the wife takes them back with her to her own family group. Lands, which were given to the woman as a bridal present among the Bataks, pass to her husband (and to her) in native possession, although every disposal embracing them requires consultation with the wife's extended family. If there are children, then they are the natural successors in the following generation to the possessions inherited through the parents or received by way of partition. (See pp. 195, 204.) Children are the focus where the differentiated family property of the parents joins as property of one kind (namely as "barang asal"). Among the Dyaks, the concept of "pusaka" comprises in addition to inherited possessions those objects (of a magical nature) which one obtains, for example, as marriage payment or as booty, and which are predestined to be transferred as inheritance to the heirs. In contrast with "pusaka" in the general sense of "sacred possession," are the possessions acquired by individual labor, by no means "holy" for the obtainer, which the Ngaju Dyaks lump

[14] The "ganggam bauntuiq" of the "harta pusaka" (see, pp. 97 and 126), similar to the family right to "pusaka" goods in Ambon.

Bl Bt R I 12: Haar S-4 (1939) 1948 OBl Indonesia OBl
Redjang-Lampong. OD12
Land Dyak OC8
Batak OD5
Bali OF1

428 594 562 tributed portion of the parent's estate in the form of native possession by the oldest son (among some Bataks, Lampongs, Pasemah, and in Bali); by the oldest daughter (Semendo, Landak and Tayan Dyak); by the youngest son (some Bataks, elsewhere in Bali), by the oldest and youngest son, *etc.* (p. 197). A differentiation in patrilineal areas between boys and girls in the sense that sons have the right to twice as much of the estate as daughters does not seem to be of native origin; the "sapikul sagendong" (the two against one) as a native standard of distribution refers only to the proportion in the communal marital property, although it appears to have infiltrated here and there occasionally into local rules of succession, as a false popular analogy and supported by the laws of Islam (p. 193).

I [611] The point of view that the wealth of the household is destined from the very beginning for the material basis of living of those who are born to the couple is confirmed in the adat law rule of substitute succession. Children of deceased children get the share of their parents from their grandparent's estate. Only religious justice sometimes breaks into this scheme.

Bl I 428 429 562 596 The position of the widow with respect to the estate in the adat law point of view is that the wife as a stranger has no right to inherit, but as a spouse is joint owner of the goods acquired during marriage, with the limitations described above (p. 193). Moreover, everywhere (except where matrilineal organization makes it unnecessary) she has a claim to life-long support from the estate. In Bali, during the period before the son is legally recognized as successor (in the rituals by the corpse of his father) she administrates the estates. As a matter of fact, she often has this right in other locales. Consequently, the wife does not receive the inherited goods of the husband as heiress, but if necessary is entitled to receive an income from this property or may receive a share from it in one payment as property with which to support herself. If, in a patrilineal system, she is taken into the man's family, she remains with them and is supported, sometimes getting a part of the estate for herself (*Bali*). If she allows herself to be separated from the man's family, however, she never receives any goods from him. With a single exception, the husband does not inherit from his wife. In patrilineal regions, such as Pasemah, the trousseau which a woman brings with her in a bride-price marriage and which she retains at divorce, goes to her husband on her death, just as in Bali the wife's share of marital property, both that earned by the wife her-